THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.24966 of 2006

ORAL ORDER:

This writ petition is filed questioning the order passed in I.A.No.335 of 2006 in S.O.A (SR) No.4917 of 2005 dated 30.6.2006 on the file of the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad.

Petitioner is the management and third respondent is Union of V.B.C. Ferro Alloys Limited represented by its General Secretary, Shramik Bhavan, Shantinagar, Patancheru, Hyderabad. It appears, second respondent, under clause 16-B of the Certified Standing Orders of the Company, has amended the standing orders extending the age of supernauuation from 55 to 58 years vide proceedings dated 11.7.2005. Aggrieved by the same, petitioner carried the matter before the Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad. Since there was delay in approaching the Industrial Tribunal, I.A.No.335 of 2006 was filed seeking to condone the delay of 98 days in filing S.A.O.(SR) No.4917 of 2005. It was the case of the petitioner-management before the Tribunal that the Standing Orders were amended with effect from 11.7.2005 and the same was received by the management on 15.7.2005 and the appeal was filed on 1.8.2005 before the Commissioner of Labour. Since the Commissioner of Labour lacks jurisdiction to entertain such appeal, the same was rejected on 31.10.2005, which was received by the petitioner on 7.11.2005. Immediately petitioner filed appeal before the Industrial Tribunal at Hyderabad on 15.11.2005 along with the present application for condoning the delay of 98 days. By order dated 30.6.2006 the said application was dismissed. Hence the writ petition.

It is the contention of the learned counsel for petitioner-management that under Section 14 of the Limitation Act, the period, which spent for

pursuing the matter before a wrong forum shall be deducted for the purpose of computing limitation since the petitioner had filed appeal in time before the Commissioner of Labour, which ultimately returned on 31.10.2005. Absolutely there was no delay in presenting the appeal either before the Commissioner of Labour or when it was re-submitted before the Employees Insurance Court and Chairman, Industrial Tribunal, Hyderabad.

These facts are not in dispute, but it appears that the I.A. was dismissed on the ground that the petitioner/appellant filed appeal before the Industrial Tribunal on 15.11.2005, but not immediately after taking the return of the appeal papers excluding the journey time for which there is no provision to condone the delay, in Limitation Act. As such the Tribunal below dismissed the application stating that once the Limitation begins to run, no disability or inability stops it.

I am of the opinion that the Tribunal below has adopted a pedantic and irrational approach in disposing of the application filed by the petitioner seeking to condone the delay of 98 days in filing (re-submitting) the appeal. Admittedly, petitioner received certified standing orders on 15.7.2005 and appeal was preferred on 1.8.2005, may be before a wrong forum and the same was returned on 31.10.2005, which was received by the petitioner on 7.11.2005 and immediately within one week thereafter, petitioner re-submitted the same before the Industrial Tribunal at Hyderabad. It is not the case of the respondent or the Tribunal that the petitioner in spite of knowing right forum has approached wrong forum. In a case of this nature, there is every possibility of causing delay in knowing as to which is the right forum and it would take 7 to 8 days in approaching the right forum. The nature of delay caused in this case does not require the Tribunal below to pass a pedantic order of this nature. I am of the opinion that the order passed by the Tribunal below is harsh, unreasonable, irrational and therefore, the same is liable to be set aside.

In the result, the writ petition is allowed and the impugned order

dated 30.6.2006 is set aside. The Tribunal shall number the appeal S.O.A (SR) No.4917 of 2005 and take up the matter forthwith. However, the interim suspension granted by this Court, which shall not have effect on the impleaded fourth respondent, shall be continued for a period of 15 days from today i.e. till the stay petition, if any, filed by the petitioner, is disposed of. The Tribunal below shall proceed to examine the matter for granting stay uninfluenced by the interim order passed by this Court. No order as to costs.

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C.V.RAMULU, J

Date: 31.7.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.24966 of 2006

31.7.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.24966 of 2006

Date: 31st July, 2007

Between:

M/s V.B.C. Ferro Alloys Limited,
represented by its Managing Director.

.. Petitioner

And

The Employees Insurance Court and
Chairman, Industrial Tribunal-I,

Hyderabad & others.

.. Respondents